

09/073,138



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APPLICATION NUMBER	FILED DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/073,138	05/05/98	KAWAKAMI	Y 2026-4124US3

EXAMINER

HM12/0513

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JOHNSON, N

ART UNIT

PAPER NUMBER

1642

9

DATE MAILED: 05/13/99

This is a communication from the examiner in charge of your application.  
 COMMISSIONER OF PATENTS AND TRADEMARKS

## OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 2/8/99

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 29-31 is/are pending in the application.  
 Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
☐ Claim(s) \_\_\_\_\_ is/are allowed.  
☒ Claim(s) 29-31 is/are rejected.  
☐ Claim(s) \_\_\_\_\_ is/are objected to.  
☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.  
☐ The specification is objected to by the Examiner.  
☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.  
☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of Reference Cited, PTO-892  
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_  
☐ Interview Summary, PTO-413  
☐ Notice of Draftsperson's Patent Drawing Review, PTO-848  
☐ Notice of Informal Patent Application, PTO-152

1. The Examiner assigned to your application has changed.
2. Claims 29-31 have been amended.  
Claims 29-31 are pending.
3. The application is now in compliance with the Sequence Rules, 37 CFR 1.821-1.825.
4. The rejection of claims 29-31 under 35 U.S.C. 112, first paragraph, is withdrawn in view of the amendments to the claims.
5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. The rejection of claim 29 under 35 U.S.C. 112, second paragraph, as being indefinite in the recitation "effective amount" is withdrawn in view of claim amendment.

#### **NEW REJECTIONS**

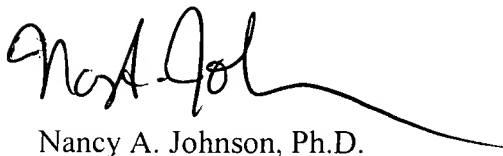
7. Claims 29-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation "having" in claims 29-31 is vague and indefinite. It is unclear whether this recitation is to be interpreted as open language (comprising) or as closed language (consisting of). For examination purposes, the recitation "having" will be interpreted as open language, as "comprising."
8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 92/21767. WO 92/21767 discloses pharmaceutical compositions of the N-terminal peptide of the AgME20 antigen and methods of immunization and treating melanoma with said peptide that are the same as that claimed (see claims 37-49). The peptide (SEQ ID NO:1) is 100% identical to amino acid residues 25-53 of the instant gp100 polypeptide, is thus a "peptide having (comprising) 5-20 contiguous amino acids of gp100," and is the same as that claimed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nancy Johnson whose telephone number is (703) 305-5860. The examiner can normally be reached on Monday through Friday from 8:30 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, can be reached on (703) 308-4310. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014 or (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



Nancy A. Johnson, Ph.D.

Patent Examiner, Group 1642

May 10, 1999